

Bureau of Indian Affairs, Interior

§ 170.2

170.942 Can a tribe use Federal funds for transportation services for a tribe's Welfare-to-Work, Temporary Assistance to Needy Families, and other quality-of-life improvement programs?

AUTHORITY: Pub. L. 105-178, 112 Stat. 107; 5 U.S.C. 565; 23 U.S.C. 101(a), 202, 204, 308; 25 U.S.C. 47, 25 U.S.C. 450.

SOURCE: 69 FR 43102, July 19, 2004, unless otherwise noted.

Subpart A—Policies, Applicability, and Definitions

§ 170.1 What does this part do?

This part provides rules and a funding formula for the Department of the Interior (DOI) in implementing the Indian Reservation Roads (IRR) Program. Included in this part are other Title 23 programs administered by the Secretary and implemented by tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act of 1975, as amended (ISDEAA).

§ 170.2 What is the IRR Program and BIA Road Maintenance Program policy?

(a) It is the policy of the Secretary of the Interior and the Secretary of Transportation (Secretaries) to do the following in relation to the IRR and BIA Road Maintenance Programs:

(1) Provide a uniform and consistent set of rules;

(2) Foster knowledge of the programs by providing information about them and the opportunities that they create;

(3) Facilitate tribal planning, conduct, and administration of the programs;

(4) Encourage the inclusion of these programs under self-determination contracts or self-governance agreements;

(5) Make available all contractible administrative functions under self-determination contracts or self-governance agreements; and

(6) Implement policies, procedures, and practices in consultation with Indian tribes to ensure the letter, spirit, and goals of Federal transportation programs are fully implemented.

(b) Where this part differs from provisions in the Indian Self-Determination and Education Assistance Act of 1975

(ISDEAA), this part should advance the policy of increasing tribal autonomy and discretion in program operation.

(c) This part is designed to enable Indian tribes to participate in all contractible IRR and BIA Road Maintenance programs. The Secretary of the Interior will afford Indian tribes the flexibility, information, and discretion to design roads programs under self-determination contracts and self-governance agreements to meet the needs of their communities consistent with this part.

(d) The Secretaries recognize that programs, functions, services, and activities, regardless of how they are administered, are an exercise of Indian tribes' self-determination and self-governance.

(1) The tribe is responsible for managing the day-to-day operation of its contracted Federal programs, functions, services, and activities.

(2) The tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts and self-governance agreements for:

(i) Use of the funds; and

(ii) Satisfactory performance of all activities funded under the contract or agreement.

(3) The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of tribes and the trust resources of individual Indians.

(e) The Secretary should interpret Federal laws and regulations to facilitate including programs covered by this part in the government-to-government agreements authorized under ISDEAA.

(f) The administrative functions referenced in paragraph (a)(5) of this section are contractible without regard to the organizational level within the Department of the Interior that carries out these functions. Including IRR Program administrative functions under self-determination contracts and self-governance agreements does not limit or reduce the funding for any program or service serving any other tribe.

(g) The Secretary is not required to reduce funding for a tribe under these programs to make funds available to another tribe.

§ 170.3

25 CFR Ch. I (4–1–13 Edition)

(h) This part must be liberally construed for the benefit of tribes and to implement the Federal policy of self-determination and self-governance.

(i) Any ambiguities in this part must be construed in favor of the tribes so as to facilitate and enable the transfer of programs authorized by 23 U.S.C. 202 and title 25 U.S.C.

§ 170.3 When do other requirements apply to the IRR Program?

IRR Program Policy and Guidance Manuals and directives apply to the IRR Program only if they are consistent with this part and 25 CFR parts 900 and 1000. See 25 CFR part 900.5 for when a tribe must comply with other unpublished requirements.

§ 170.4 What is the effect of this part on existing tribal rights?

This part does not:

- (a) Affect the sovereign immunity from suit enjoyed by tribes;
- (b) Terminate or reduce the trust responsibility of the United States to tribes or individual Indians;
- (c) Require a tribe to assume a program relating to the IRR Program; or
- (d) Impede awards by other agencies of the United States or a State to tribes to administer programs under any other law.

§ 170.5 What definitions apply to this part?

AASHTO means the American Association of State Highway and Transportation Officials.

Annual Funding Agreement means a negotiated agreement of the Secretary to fund, on an annual basis, the programs, functions, services, and activities transferred to a tribe under the Indian Self-Determination and Education Assistance Act, as amended.

Appeal means a request by a tribe or consortium for an administrative review of an adverse agency decision.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BIADOT means the Bureau of Indian Affairs, Division of Transportation.

BIA force account means the performance of work done by BIA employees.

BIA Road System means the Bureau of Indian Affairs Road System under the IRR system. It includes those existing

and proposed IRR's for which BIA has or plans to obtain legal right-of-way. BIA has the primary responsibility to improve and maintain the roads on this system.

CFR means the United States Code of Federal Regulations.

Construction means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of an IRR transportation facility, as defined in 23 U.S.C. 101. This includes bond costs and other related costs of bonds or other debt financing instruments. It also includes costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. The term includes—

- (1) Locating, surveying, and mapping (including establishing temporary and permanent geodetic markers in accordance with specifications of the U.S. Geological Survey);
- (2) Resurfacing, restoration, and rehabilitation;
- (3) Acquiring rights-of-way;
- (4) Providing relocation assistance; acquiring replacement housing sites; and acquiring, rehabilitating, relocating, and constructing replacement housing;
- (5) Eliminating hazards of railway grade crossings;
- (6) Eliminating roadside obstacles;
- (7) Making improvements that facilitate and control traffic flow, such as grade separation of intersections, widening lanes, channelizing traffic, installing traffic control systems, and establishing passenger loading and unloading areas; and
- (8) Making capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

Construction contract means a fixed price or cost reimbursement self-determination contract for a construction project, except that such term does not include any contract—

- (1) That is limited to providing planning services and construction management services (or a combination of such services);